

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Toney Anthony White, III,

4 Petitioner

5 v.

6 Calvin Johnson, et al.,

7 Respondents

Case No. 2:21-cv-01114-APG-VCF

8

9

10 **ORDER**

11 Petitioner Toney Anthony White, III filed a counseled motion to reopen this matter (ECF  
12 No. 20) and a *pro se* emergency motion for an order to show cause (ECF No. 23). The  
13 respondents do not oppose reopening but contend that doing so may be premature. ECF No. 32.  
14 I will grant the motion to reopen this action. *See United States v. Sineneng-Smith*, 140 S. Ct.  
15 1575, 1579 (2020). I will *sua sponte* strike the *pro se* emergency motion for an order to show  
cause as filed in violation of Local Rule IA 11-6.

16 “It is well established that district courts have inherent power to control their docket,”  
17 including the power to strike improperly filed items from the docket. *Ready Transp., Inc. v. AAR*  
18 *Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010). Local Rule of Practice IA 11-6(a) states that “a  
19 party who has appeared by attorney cannot while so represented appear or act in the case. This  
20 means that once an attorney makes an appearance on behalf of a party, that party may not  
21 personally file a document with the court; all filings must thereafter be made by the attorney.”

22 Because White is represented by counsel, he may not personally file motions or  
23 documents with the court. Accordingly, I will order White’s *pro se* emergency motion for an  
order to show cause (ECF No. 23) stricken from the docket.

1 I THEREFORE ORDER as follows:

2 1. White's motion to reopen this action (**ECF No. 20**) is granted. The clerk of the court  
3 will reopen this action.

4 2. The clerk of the court will **strike the *pro se* emergency motion for order to show**  
5 **cause (ECF No. 23)** from the docket.

6 3. White must file an amended petition for writ of habeas corpus by February 17, 2023.  
7 The amended petition must specify whether each ground for relief was exhausted in  
8 state court. For each claim that has been exhausted in state court, the amended  
9 petition must state how, when, and where, the claim was exhausted. If White  
10 determines an amended petition need not be filed, then he must file a notice to that  
11 effect by February 17, 2023.

12 4. The respondents will have 60 days following the filing of the amended petition to file  
13 an answer or other response to the amended petition. If White does not file an  
14 amended petition, the respondents will have 60 days following the due date for the  
15 amended petition to file an answer or other response to the petition. In any answer  
16 filed on the merits, the respondents shall specifically cite to and address the  
17 applicable state court written decision and state court record materials, if any,  
18 regarding each claim within the response to that claim.

19 5. White will have 60 days following the filing of an answer to file a reply. The  
20 respondents will thereafter have 30 days following the filing of a reply to file a  
21 response to the reply.

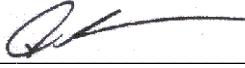
- 1       6. If the respondents file a motion to dismiss, White will have 60 days following the
- 2                filing of the motion to file a response. The respondents will thereafter have 30 days
- 3                to file a reply.
- 4       7. If White wishes to move for leave to conduct discovery, he must file the motion
- 5                concurrently with, but separate from, the response to the respondents' motion to
- 6                dismiss or the reply to the answer. Any motion for leave to conduct discovery filed
- 7                before that time may be considered premature and may be denied without prejudice
- 8                on that basis. The respondents must file a response to any such motion concurrently
- 9                with, but separate from, their reply in support of their motion to dismiss or their
- 10                response to White's reply. Thereafter, White will have 20 days to file a reply in
- 11                support of the motion for leave to conduct discovery.
- 12       8. If White wishes to have an evidentiary hearing, he must file a motion it concurrently
- 13                with, but separate from, the response to the motion to dismiss or the reply to the
- 14                answer. Any motion for an evidentiary hearing filed before that time may be
- 15                considered premature and may be denied without prejudice on that basis. The motion
- 16                for an evidentiary hearing must specifically address why an evidentiary hearing is
- 17                required and must meet the requirements of 28 U.S.C. § 2254(e). The motion must
- 18                state whether an evidentiary hearing was held in state court, and, if so, where the
- 19                transcript is located in the record. If White moves for an evidentiary hearing, the
- 20                respondents must file a response concurrently with, but separate from, their reply in
- 21                support of their motion to dismiss or their response to White's reply. Thereafter,
- 22                White will have 20 days to file a reply in support of the motion.

1       9. All procedural defenses raised by the respondents, including exhaustion, must be  
2       raised in a single consolidated motion to dismiss. I do not wish to address any  
3       procedural defenses in *seriatim* fashion in multiple successive motions to dismiss.  
4       Procedural defenses omitted from a motion to dismiss will be subject to potential  
5       waiver. The respondents shall not file a response that consolidates their procedural  
6       defenses, if any, with their responses on the merits, except under 28 U.S.C  
7       § 2254(b)(2) as to any unexhausted claims that clearly lack merit. If the respondents  
8       seek dismissal of unexhausted claims under § 2254(b)(2) they must: (a) do so within  
9       the single motion to dismiss and not in the answer; and (b) specifically direct their  
10       argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*  
11       *Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

12       10. The parties must redact personal-data identifiers in all unsealed documents filed with  
13       the court as required by LR IC 6. Any state court record and related exhibits must be  
14       filed in accordance with LR IA 10-3 and LR IC 2-2 and be filed with a separate index  
15       identifying the exhibits by number. The index must be filed in CM/ECF’s document  
16       upload screen as the base document to receive the base docket number (e.g., ECF No.  
17       10). Each exhibit must then be filed as an “attachment” to the base document—i.e.,  
18       the index—to receive a sequenced sub-docket number (e.g., Exhibit A (ECF No. 10-  
19       1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth). If the  
20       exhibits will span more than one filing, the base document in each successive filing  
21       must be either a copy of the index or volume cover page. *See* LR IC 2-2(a)(3)(A).  
22       Paper copies of any exhibits over 50 pages—for this case—must be appropriately  
23       bound, tabbed, and delivered to the Las Vegas Clerk’s office. *See* LR IA 10-3(i); LR

1 IC 2-2(g). Courtesy copies must be addressed to the attention of "Staff Attorney" on  
2 the mailing address label.

3 Dated: November 14, 2022.

4   
5 ANDREW P. GORDON  
6 UNITED STATES DISTRICT JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23